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09/560,246	04/26/2000	Nadia M. Corlett	9911-01	2384

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EXAMINER

STEPHENS, JACQUELINE F

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/560,246  
Filing Date: April 26, 2000  
Appellant(s): CORLETT, NADIA M.

**MAILED**

**SEP 22 2005**

**Group 3700**

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Eric K. Satermo  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/11/05 appealing from the Office action  
mailed 11/4/04.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

**WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claims 25 and 26 under 35 U.S.C. 112, second paragraph, is withdrawn.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

Art Unit: 3761

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(s) of such treaty in the English language.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 4, 5, 9, 16, 19, 20, 23, and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Meixner USPN 6321513.

As to claims 1 and 9, Meixner discloses an individually packaged highly compact and portable absorbent article comprising: a single (Meixner discloses his packaging method and material is designed to package at least one article (col. 15, lines 65-66)) compressed absorbent article capable of being compressed and reconfigurable from a normal condition to a compressed condition (col. 9, lines 15-22); and a packaging for retaining the absorbent article in the compressed condition; the absorbent article having three dimensions at least one of which is reduced when the absorbent article is in the compressed condition; the absorbent article occupying a volume of space that is reduced by at least about 30% when the absorbent article is reconfigured from a normal condition to a compressed condition (col. 4, lines 22-31), and the packaging for retaining the single absorbent article when the article is in a compressed condition,

Art Unit: 3761

yielding an individually packaged compact and portable absorbent article (col. 4, lines 22-31 and col. 15, lines 65-66).

As to claims 4 and 5, Meixner discloses the absorbent article is reconfigured from a normal condition to a compressed condition by negative pressure, and the packaging is configured to retain at negative pressure the compressed absorbent article (col. 3, lines 46-63, col. 4, lines 22-32, col. 6, lines 4-12, and col. 9, lines 15-22).

As to claims 16 and 20, Meixner discloses a method for packaging an absorbent article to yield a single - Meixner discloses his packaging method and material is designed to package at least one article (col. 15, lines 65-66) - individually packaged absorbent article, which is compact and portable, the method comprising the steps of:

- providing a packaging (col. 4, lines 22-24);
- providing a single absorbent article, the absorbent article occupying a volume of space in three dimensions - Meixner discloses his packaging method and material is designed to package at least one article (col. 15, lines 65-66), and any absorbent article inherently occupies a volume of space in three dimensions;
- reconfiguring the absorbent article such that the volume of space is reduced by at least about 30% (col. 4, lines 22-31);
- retaining the absorbent article when reconfigured within the packaging, thereby yielding an individually packaged compact and portable absorbent article (col. 4, lines 22-31; col. 9, lines 15-22; and col. 15, lines 65-66).

As to claim 19, Meixner discloses the absorbent article is reconfigured from a normal condition to a compressed condition by negative pressure, and the packaging is configured to retain at negative pressure the compressed absorbent article (col. 3, lines 46-63, col. 4, lines 22-32, col. 6, lines 4-12, and col. 9, lines 15-22).

As to claims 23 and 24, the limitations of rolling and folding are directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

#### **(10) Response to Argument**

Applicant's arguments filed 7/11/05 have been fully considered but they are not persuasive. The arguments regarding the Minton reference were not responded to as this reference was not used in the Final Rejection mailed 11/4/04.

Regarding the rejection of claims 1, 4, 5, 9, 16, 19, 20, 23, and 24 under 35 U.S.C. 102(e) as being anticipated by Meixner, applicant's arguments are not persuasive.

Applicant argues Meixner fails to teach a single absorbent article that is compressed and then packaged while compressed to yield an individually packaged

Art Unit: 3761

absorbent article as recited in claim 1. However, it is noted that the features upon which applicant relies (i.e., a single absorbent article that is compressed and then packaged while compressed) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Additionally, applicant is arguing method steps in an article claim (claim 1). "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

Applicant argues Meixner fails to teach or suggest packaging a single absorbent article to yield an individually packaged absorbent article. As discussed in the Office Actions mailed 2/10/04 and 11/4/04, the examiner respectfully disagrees based on the fact that Meixner discloses his packaging method and material is designed to package at least one article (col. 15, lines 65-66). Additionally, Meixner demonstrates in Figure 4 a single article 19 in the bag 2.

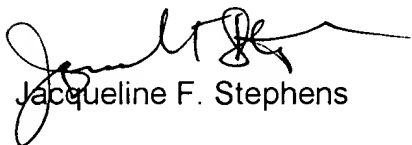


**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Jacqueline F. Stephens

Examiner, Art Unit 3761

Conferees:

Tanya Zalukaeva,

Supervisor, Art Unit 3761



September 16, 2005



Angela Sykes

Supervisor, Art Unit 3762